



State of Ohio Environmental Protection Agency

2785

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March 31, 1998

Re: Director's Final Findings & Orders  
United States Department of Energy  
Portsmouth Gaseous Diffusion Plant  
Bechtel Jacobs Company LLC.  
Piketon, Ohio  
US EPA ID No.: OH7 890 008 983

Mr. Ray Miskelley  
U.S. Department of Energy  
P.O. Box 2001  
Oak Ridge, Tennessee 37831-8510

Ms. Jean Dunkirk  
Bechtel Jacobs Company LLC.  
P.O. Box 350  
151 Lafayette Drive  
Oak Ridge, Tennessee 37831-0350

CERTIFIED MAIL

Dear Mr. Miskelley and Ms. Dunkirk:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

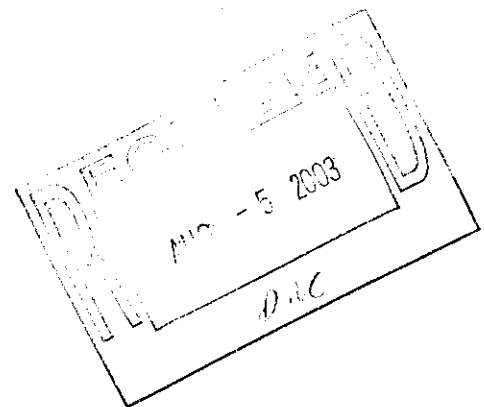
Sincerely yours,

*Thomas E. Crepeau*

Thomas E. Crepeau, Manager  
Data Management Section  
Division of Hazardous Waste Management

TEC/dhs

cc: Todd Anderson, Legal  
Dave Sholtis, Asst. Chief, DHWM  
Jeremy Carroll, RECS, DHWM  
Steve Hamlin, DHWM, SEDO  
Donna Goodman, DHWM, SEDO  
Beth Gianforcaro, PIC  
Jim Payne, AGO



George V. Voinovich, Governor  
Nancy P. Hollister, Lt. Governor  
Donald R. Schregardus, Director

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

United States Department of Energy  
Portsmouth Gaseous Diffusion Plant  
P.O. Box 700  
Piketon, Ohio 45661-0700

*Director's Final  
Findings and Orders*

and

Bechtel Jacobs Company LLC.  
P.O. Box 4699  
Oak Ridge, Tennessee 37831-4699

**Respondents**

**PREAMBLE**

It is hereby agreed by and among the Parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the U.S. Department of Energy ("Respondent DOE") and Bechtel Jacobs Company LLC. ("Respondent Bechtel Jacobs Company LLC.") (collectively "Respondents") pursuant to the authority vested in the Director of Environmental Protection ("Director") by Ohio Revised Code ("ORC") sections 3734.02(G), 3734.13, and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon the Respondents, their assigns and successors in interest. No change in ownership or operation of the Facility will in any way alter the Respondents' responsibilities under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as in ORC Chapter 3734. and the regulations promulgated thereunder.

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#### IV. FINDINGS OF FACT

The Director hereby makes the following findings:

1. Pursuant to ORC section 3734.02(G) and OAC rule 3745-50-31, the Director may, by order, exempt any person generating, storing, treating, disposing or transporting hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health, safety or the environment from any requirement to obtain a permit or license, comply with the manifest system or comply with other requirements of ORC chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2906, 42 U.S.C. Section 6921, et seq., as amended.
2. Respondent DOE owns and operates the Portsmouth Gaseous Diffusion Plant ("Facility"), a uranium enrichment facility located in Pike County, Ohio approximately twenty (20) miles north of the City of Portsmouth.
3. Respondent DOE commenced operations at the Facility in 1954. Facility operations are located on a 15.1 square kilometer (3,714 acres) federally owned reservation.
4. Respondent DOE owns and operates hazardous waste units at the Facility. In addition, Respondent DOE owns and operates storage facilities at the Facility for its depleted uranium hexafluoride ("DUF6") and Lithium Hydroxide ("LiOH").
5. Lockheed Martin Energy Systems, Inc. (f.k.a. Martin Marietta Energy Systems) ("LMES"), is a Delaware corporation, licensed to do business in the State of Ohio on March 2, 1984. Until April 1, 1998, LMES is under contract with Respondent DOE to carry out certain day-to-day operations at the Facility including operations of the hazardous waste storage units and the storage facilities for DUF6 and LiOH. LMES' management and operation contract with Respondent DOE at the Facility expires on April 1, 1998.
6. An Ohio Hazardous Waste Facility Installation and Operation Permit ("Permit") was issued to the Facility on August 21, 1995. The Permit identifies Respondent DOE as the owner and operator of the Facility and LMES as co-operator of the Facility.

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7. On December 18, 1997, Respondent DOE selected Respondent Bechtel Jacobs Company LLC. to carry out day-to-day operations at the Facility including operation of the of the hazardous waste storage units and DUF6 and LiOH storage facilities formerly co-operated by LMES. Respondent Bechtel Jacobs Company LLC. is a limited liability corporation, licensed to do business in the State of Ohio on December 24, 1997. On April 1, 1998, Respondent Bechtel Jacobs Company LLC. becomes responsible by contract with Respondent DOE to carry out day-to-day operations at the Facility.
8. On February 24, 1998 Director's Final Findings and Orders ("February 1998 Orders") were issued to LMES and Respondent DOE. The February 1998 Orders addressed the storage, management, sale, use and reuse of depleted uranium hexafluoride and lithium hydroxide at the Facility.
9. On February 18, 1998, LMES, Respondents DOE and Bechtel Jacobs Company LLC. and Ohio EPA held a conference call to discuss what would be required in order to effect transfer of the Permit from LMES to Respondent Bechtel Jacobs Company LLC. Pursuant to this conference call, Respondents DOE and Bechtel Jacobs Company LLC. submitted documents to Ohio EPA on March 3, 1998 and March 6, 1998, as more fully described below. On March 6, 1998, Respondents DOE and Bechtel Jacobs Company LLC. submitted a written agreement from LMES and Respondents DOE and Bechtel Jacobs Company LLC. specifying April 1, 1998 as the date for the transfer of permit responsibility from LMES to Respondent Bechtel Jacobs Company LLC. Also on March 6, 1998, Respondents DOE and Bechtel Jacobs Company LLC. submitted to Ohio EPA a portion of the permit modification application required by OAC rules 3745-50-51 and 3745-50-52(C) for change in operator.
10. On March 3, 1998, Respondents DOE and Bechtel Jacobs Company LLC. submitted to Ohio EPA a draft exemption order for an exemption under ORC section 3734.02(G) from the requirement to have a hazardous waste facility installation and operation permit for the purpose of allowing Respondent Bechtel Jacobs Company LLC. to commence operating the Facility and from the requirement under OAC rule 3745-50-52(C) to submit a permit modification application to the Director no later than ninety (90) days prior to the scheduled change in operator at the Facility.
11. On March 27, 1998, Ohio EPA received an exemption application from Respondents DOE and Bechtel Jacobs Company LLC. pursuant to ORC section 3734.02(G).

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- 3734.02(G) and OAC rule 3745-50-31. In the application, Respondents DOE and Bechtel Jacobs Company LLC. requested an exemption from the requirement to have a hazardous waste facility installation and operation permit for the purpose of allowing Respondent Bechtel Jacobs Company LLC. to commence operating the Facility. Additionally, Respondent Bechtel Jacobs Company LLC. requested an exemption from the requirement to submit a permit modification application to the Director no later than ninety (90) days prior to the scheduled change in operator.
12. Respondents are each a "person" as defined in ORC section 3734.01(G) and Ohio Administrative Code ("OAC") rule 3745-50-10(A)(83).
  13. Respondent DOE owns and operates a "facility" or "hazardous waste facility" as defined in ORC section 3734.01(N) and OAC rule 3745-50-10(A)(35). On April 1, 1998, Respondent Bechtel Jacobs Company LLC. will become a co-operator of a "facility" or "hazardous waste facility" as defined in ORC section 3734.01(N) and OAC rule 3745-50-10(A)(35).
  14. Pursuant to ORC sections 3734.02(E) and (F), no person shall establish or operate a hazardous waste facility without an Ohio hazardous waste facility installation and operation permit.
  15. Pursuant to ORC section 3734.05(I) and OAC rules 3745-50-51 and 3745-50-52, the transfer of a hazardous waste facility installation and operation permit to a new owner or operator requires a modification to the hazardous waste facility installation and operation permit.
  16. It is Ohio EPA's position that Respondent Bechtel Jacobs Company LLC.'s operation of the Facility, commencing on April 1, 1998, will constitute a transfer of the Permit to a new operator and will require a modification to the Permit pursuant to ORC section 3734.05(I) and OAC rules 3745-50-51 and 3745-50-52.
  17. OAC rule 3745-50-52(C) requires the new owner or operator of a hazardous waste facility to submit a permit modification application to the Director no later than ninety (90) days prior to the scheduled change in owner or operator.
  18. Respondent Bechtel Jacobs Company LLC. has represented to the Director that in light of the scheduled change in operator of the Facility, Respondent Bechtel Jacobs Company LLC. is not able to comply with the requirement to submit a permit modification application to the Director no later than ~~ninety (90)~~ days prior

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to the scheduled change in operator as required by OAC rule 3745-50-52(C).

19. Pursuant to ORC section 3734.02(G) and OAC rule 3745-50-31, the Director has decided to exempt Respondents DOE and Bechtel Jacobs Company LLC. from the requirement to have a hazardous waste facility installation and operation permit for the purpose of allowing Respondent Bechtel Jacobs Company LLC. to commence operating the Facility provided that Respondents comply with the Orders set forth herein. Furthermore, the Director has decided to exempt Respondent Bechtel Jacobs Company LLC. from the requirement to submit a permit modification application to the Director no later than ninety (90) days prior to the scheduled change in operator of the Facility provided that Respondents comply with the Orders as set forth herein. The Director has determined that should Respondents comply with the Orders as set forth herein, it is unlikely that the public health or safety or the environment will be adversely affected. These Orders are consistent with and equivalent to the rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2906, 42 U.S.C. Section 6921 et seq., as amended, except as otherwise provided by ORC chapter 3734.

## V. ORDERS

1. Respondents DOE and Bechtel Jacobs Company LLC. are hereby exempted from the requirement to have a hazardous waste facility installation and operation permit for the purpose of allowing Respondent Bechtel Jacobs Company LLC. to commence operating the Facility and Respondent Bechtel Jacobs Company LLC. is hereby exempted from the requirement to submit a permit modification application no later than ninety (90) days prior to the scheduled change in operator of the Facility provided that Respondents DOE and Bechtel Jacobs Company LLC. submit to Ohio EPA no later than May 1, 1998 the following portions of the permit modification application required by OAC rules 3745-50-51 and 3745-50-52(C) not already submitted pursuant to the March 6, 1998 submittal to Ohio EPA:
  - a. A description of the exact changes to be made to the Facility that would require the Permit to be modified. This description may take the form of a short statement which includes a modification request to the Part B permit to delete references to LMES in the Part B permit and replace those references with references to Bechtel Jacobs Company LLC.;

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- b. A statement which identifies the permit modification as a Class 3 modification;
  - c. A statement explaining why the permit modification is needed; and
  - d. A document intended for insertion into the Part B permit which deletes references in the Part B permit to LMES and replaces those references with Bechtel Jacobs Company LLC. This document shall include a certification pursuant to OAC rule 3745-50-42(D).
- 2. The exemption allowing Respondents to commence operating the Facility without an Ohio hazardous waste facility installation and operation permit shall terminate when any one of the following four events occurs:
  - a. Respondents fail to comply with these Orders;
  - b. Respondents DOE and Bechtel Jacobs Company LLC. withdraw their modification application, referenced in Finding No. 9, from Ohio EPA;
  - c. The Director approves the modification to the Permit identifying Respondent Bechtel Jacobs Company LLC. as the new co-operator of the Facility;
  - d. The Director disapproves the modification to the Permit to identify Respondent Bechtel Jacobs Company LLC. as the new co-operator of the Facility, and all available appeals have been exhausted;
  - e. The Director revokes the exemptions granted by these Orders.
- 3. The issuance of these Orders by the Director does not release Respondents of any liability they may have incurred for any violations which may have occurred at the Facility prior to the effective date of these Orders. The issuance of these Orders does not release Respondents of any obligations they have to comply with the State of Ohio environmental laws, except as otherwise specifically provided herein.

## VI. OTHER APPLICABLE LAWS

Nothing in these Orders shall be construed as waiving or compromising in any way the

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applicability and enforcement of any other statutes or regulations applicable to Respondents' activities at the Facility. Ohio EPA reserves all rights and privileges except as specified herein. Respondents reserve all defenses they may have.

## VII. NOTICE

All documents demonstrating compliance with these Orders, and other documents required under these Orders to be submitted to Ohio EPA, shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office  
Attn: DHWM Group Leader  
2195 Front Street  
Logan, Ohio 43138

AND

Ohio Environmental Protection Agency  
Attn: Manager, Engineering/Closure Section  
1800 Watermark Drive, P.O. Box 1049  
Columbus, Ohio 43216-1049

## VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action, as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities at the Facility, pursuant to ORC chapter 3734, or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions.

The Director reserves the right to revoke these Orders upon a determination by Ohio EPA that such revocation is necessary to protect human health or safety or the environment. Respondents reserve the right to seek administrative or judicial review of any such revocation.

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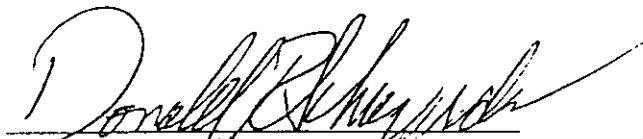


It is Ohio EPA's position that the Anti-Deficiency Act, 31 U.S.C. section 1341, as amended, does not apply to any obligations set forth in these Orders, and that obligations herein are not affected by Respondent, DOE's failure to obtain adequate funds or appropriations from Congress. It is Respondent DOE's position that the obligations set forth in these Orders are subject to the provisions of the Anti-Deficiency Act and are subject to the availability of funding. Respondent DOE and Ohio EPA agree that it is premature to raise and resolve the validity of such positions at this time.

#### IX. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any persons, firm, partnership or corporation, not a signatory to those Orders, for any liability arising out of or relating to the activities at the Facility.

#### IT IS SO ORDERED:

  
Donald R. Schregardus, Director

3/30/98  
Date

#### X. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such party to this document.

#### XI. WAIVER

Respondents agree that these Orders are lawful and reasonable and that the times provided for compliance herein are reasonable. Respondents, by acceptance of these Orders, agree to comply with these Orders and acknowledge that Respondents' failure to comply with these Orders may result in further legal action by Ohio EPA.

Respondents hereby waive the right to appeal or otherwise challenge the issuance, terms and service of these Orders. Nothing in these Orders shall affect the Respondents' rights to seek administrative or judicial review of other final actions by the Director pursuant to ORC Section 3745.04 or other applicable law. <sup>OHIO E.P.A.</sup>

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Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal in support of these Orders. In any event, the Respondents shall continue to comply with these Orders notwithstanding such appeal, and intervention unless these Orders are stayed, vacated, or modified.

IT IS SO AGREED:

RESPONDENTS:

U.S. Department of Energy

By: Justin K. Poir

Date: 3/27/98

Executive Director, Office of Assistant Manager for Environmental Management  
Title

Bechtel Jacobs Company LLC.

By: Jo Thiesing  
Vice President  
Title

Date: 3-27-98

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Ohio Environmental Protection Agency

By: Donald R. Schregardus  
Donald R. Schregardus, Director

Date: 3/30/98